

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.24023 OF 2007

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DATED: 23.11.2007

Between:

Narsimha Reddy

.. Petitioner

And

The Dy. Chief Traffic
Manager (now called as
DVM), APSRTC, Nizamabad
and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.24023 OF 2007

ORDER:

This writ petition is filed being aggrieved by the docket order, dated 25.06.2007, made by the 3rd respondent- Labour Court-II, Hyderabad, returning the petition, vide I.A. (SR) No.610 of 2007, filed by the petitioner, under Section 11 (1) of the Industrial Disputes Act, 1947 (for short 'the Act') read with Rule 30 of the A.P. Industrial Disputes Rules, 1958 (for short 'the Rules'), seeking review of the award, dated 11.06.2007, passed in I.D.No.46 of 2005.

2. Petitioner is the workman and respondents 1 and 2 are the management. The petitioner filed the above stated I.A. seeking review of the award, dated 11.06.2007, passed in I.D.No.46 of 2005, on the file of the 3rd respondent – Labour Court-II, Hyderabad, on the ground that the arguments advanced by the learned counsel for the petitioner, as to the validity of the domestic enquiry, were heard on 24.04.2007 and, thereafter, the matter was adjourned to 22.05.2007 for orders, and later from 22.05.2007 to 11.06.2007, and on the said date, award was passed on merits, instead of giving a finding as to the validity or otherwise of the domestic enquiry conducted by the management.

3. According to the learned counsel for the petitioner, neither the

Labour Court gave any finding as to the validity of the domestic enquiry, nor was an opportunity given to both parties to advance arguments on merits. As such, the award, dated 11.06.2007, passed by the Labour Court in I.D.No.46 of 2005 is liable to be set aside and an opportunity is to be given to both parties for advancing further arguments on merits. But, the Labour Court erroneously dismissed the petition filed seeking to review the award.

4. The learned counsel for the respondents contended that the very petition under Section 2-A (2) of the Act is not maintainable.

5. The impugned docket order, dated 25.06.2007, passed by the Labour Court speaks that review petition is not maintainable before it, award was passed on merits and it becomes functus officio.

6. There is no necessity of going into all the details. It is suffice to notice that in the award, dated 11.06.2007, passed in I.D.No.46 of 2005, no finding as to the validity of the domestic enquiry conducted by the management was recorded. In case, if the domestic enquiry conducted by the management is declared to be invalid or vitiated, the management would be offered to adduce evidence to substantiate the charges and, if the domestic enquiry is found to be valid, the Labour Court can decide the matter on merits, after hearing the parties and after giving preliminary finding that the domestic enquiry is valid. In this case, such a course of action is not followed. The Labour Court, after hearing the arguments of the learned counsel on either side, on 24.04.2007, as to the validity of the domestic enquiry, passed the award on 11.06.2007 on merits, but without giving any finding as to the validity of the domestic enquiry. Further, the award was passed on 11.06.2007 and the present I.A. was filed on 22.06.2007, under

Section 11 (1) of the Act read with Rule 30 of the Rules. If there is a lacuna in the procedure to be followed by the adjudicatory machinery, the aggrieved party is always entitled to file a petition, seeking review of the award passed by it, within 30 days from the date of passing of such award. In this case, as noticed above, neither a finding was recorded by the Labour Court as to the validity of the domestic enquiry nor the counsel on either side were heard as to the merits of the case and, as such, the petitioner filed the review petition within 30 days from the date of passing of the award. Thus, I am of the opinion that the review petition is maintainable and the Labour Court has not become functus officio and it can entertain the said review petition and decide the same on merits.

7. For the above reasons, the impugned docket order, dated 25.06.2007, made in I.A. (SR) No.610 of 2007 is liable to be set aside and is, accordingly, set aside. Consequently, the said I.A. (SR) No.610 of 2007 is allowed and the Labour Court is directed to reconsider the matter afresh and record findings as to the validity of the domestic enquiry conducted by the management. If the domestic enquiry is found to be not valid, the management shall be given an opportunity to lead evidence and, thereafter, the matter can be proceeded with on merits. Further, in view of the contention of the learned counsel for the respondents that the very petition under Section 2-A (2) of the Act is not maintainable and since the management has already filed a counter taking that objection, the Labour Court shall also frame an issue as to the maintainability of the petition under Section 2-A (2) of the Act. However, the Labour Court shall decide all the issues that may arise for consideration simultaneously and decide the matter on merits.

8. The writ petition is, accordingly, allowed. No costs.

JUSTICE C.V. RAMULU

23rd November, 2007.
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